

REMARKS

The Examiner required restriction/election among the claims under 35 U.S.C. § 121 asserting that the pending claims reflect three groups of inventions that are not so linked as to form a single general inventive concept. The Examiner asserted that the claims fell into the following groups:

- Group I. Claim(s) 1-5 drawn to the preparation of a medicament for the treatment of ADHD in a mammal;
- Group II. Claim(s) 1-5 and 6-9 drawn to a method of preventing or treating ADHD disorder in a mammal, in particular a human, which comprises administering to said mammal a therapeutically effective amount of methylphenidate and one of melatonin, a melatonin analogue, or one or more pharmaceutically acceptable salts or esters thereof; and
- Group III. Claims 10-12 drawn to the pharmaceutical composition.

Applicants provisionally elect, with traverse, the subject matter in Group II. Claim(s) 1-5 and 6-9 drawn to a method of preventing or treating ADHS disorder in a mammal, in particular a human, which comprises administering to said mammal a therapeutically effective amount of methylphenidate and one of melatonin, a melatonin analogue, or one or more pharmaceutically acceptable salts or esters thereof.

Applicants elected species in Group II is methylphenidate and melatonin. Applicants respectfully reserve the right to pursue the claims not elected (group/species) in one or more divisional applications.

Applicants respectfully disagree with the restriction/election requirement, and submit that the Examiner has not met the burden of establishing two or more independent and distinct inventions claimed in one application under 35 U.S.C. § 121. Applicants submit that the pending claims should not be subject to restriction/election. Examining all the claims together would not present a serious burden on the Examiner because the Examiner would certainly review art involving methylphenidate and melatonin or

derivatives thereof and methods of using them. Moreover, the Examiner would almost certainly cite the same reference in one group against the other group. Applicants submit that separate searches for each of the alleged groups would be substantially duplicative, and the Examiner has not demonstrated that a search directed to one group is unreasonable or would present an undue burden on the patent office. Accordingly, Applicants respectfully request the restriction/election requirement to be withdrawn.

Applicants petition the Commissioner for a 3-month extension of time. No additional fee is believed to be due with respect to the filing this response. If any additional fees are due, or an overpayment has been made, please charge, or credit, our Deposit Account No. 11-0171 for such sum.

If the Examiner has any questions regarding the present application, the Examiner is cordially invited to contact Applicants' attorney at the telephone number provided below.

Respectfully submitted,

/s William D. Schmidt /s
William D. Schmidt
Registration No.: 39,492
Attorney for Applicant

Kalow & Springut LLP
Telephone No.: (212) 813-1600